

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

PHILLIP CLINE , ET. AL ,

#08381-032

"CLASS ACTION"

(Enter above the full name of the plaintiff
or plaintiffs in this action).

(Inmate Reg. # of each Plaintiff)

VERSUS

CIVIL ACTION NO. 5:11-0870

(Number to be assigned by Court)

1) D.J.HARMON , Acting Warden ,et. al,

2) MIKE SNOW , Unit Manger

3) Mr. THOMPSON , Medical Director

4) Dr. DOMINIC MCLAIN , D. O. / 5) FEDERAL BUREAU OF PRISONS

(Enter above the full name of the defendant
or defendants in this action)

(All in their official)
(and individual cap-)
(acities.)

COMPLAINT

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes _____ No X

- B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs: _____

Defendants: _____

2. Court (if federal court, name the district; if state court, name the county);

-
3. Docket Number: _____

4. Name of judge to whom case was assigned:

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

-
6. Approximate date of filing lawsuit: _____

7. Approximate date of disposition: _____

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: D.J.HARMON

is employed as: Acting Warden at time in question

at FCI-BECKLEY , Beaver , WV. 25813

D. Additional defendants: ^① JAMES ELLIS ,Nurse Practioner

^② MIKE SNOW , Unit Manager

^③ Dr. DOMINIC MCLAIN , D.O.

^④ Mr. THOMPSON , Medical Director

^⑤ FEDERAL BUREAU OF PRISONS

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

Brief History

Plaintiff cline is a disabled veteran whom has exstensive
injuries which includes pelvic shear fracture with pelvic
tilt,fracture right pubic rami and separation of sacroilac
joints,with chronic lumbosacral strain and decreased sensory
function of L5-S1of right lower extremity as a result there
is pronounced intervertebral disc syndrome with persistent
symptoms compatiable with sciatic neuropathy,characteristic
chronic pain and demonstratable muscle spsam,ankle jerk,

BRIEF HISTORY

and other unidentified neuropathy findings appropriate to site of diseased disc and little intermittent relief. The plaintiff suffers an exceptional and unusual disability demonstrates functional range of motion loss due to severe and chronic pain (see EXHIBIT A) Due to the extent of the injuries that make up Cline's disability the judge also recommended to the federal bureau of prisons: placement at FMC Lexington, which is a federal medical center so that Cline may receive the proper care and treatment accordingly, per: judgement & commitment order of 7-25-2002 (see EXHIBIT B) Plaintiff Cline has for the 10 years tried to be transferred to a medical center so that he may receive the proper care and treatment, specifically pain meds strong enough to adequately address his pain to a manageable level so that he might also engage in some sort of therapy which also would slow deterioration, but all to no avail. Plaintiff Cline has been systematically denied at every level imaginable medical treatment repeatedly. A consistent pattern of reckless or negligent conduct is sufficient to establish DELIBERATE INDIFFERENCE to serious medical needs in violation of 8th amendment, to be free from cruel and unusual punishment. To be forced to endure severe pain & suffering without providing adequate care to serious medical needs is cruel & unusual punishment which is nothing short of wanton infliction of pain and deliberate indifference. (see EXHIBITS C-H)

STATEMENT OF CLAIM

As found in Administrative remedy ID# 595891 (see EXHIBIT I) on 6-2-2010 Mr. Cline filed a (BP-8) - "Informal Resolution" to be transferred to a medical center so as to adequately address and treat the plethora of medical needs which this institution

FCI-Beckley can not or will not provide nurse practitioner James Ellis and Dr. Domonic McLain D.O. are both aware of the plaintiff's extensive injuries and ailments. Dr. McLain did prescribe pain-killer "neurontin" and "Motrin" to help ease the pain and told plaintiff that there were (12) inmates ahead of him awaiting transfer to Medical center for treatment as per plaintiff's court recommendation to be designated to Medical center (See Exhibit B). Response to (BP-8) stated, "You are designated as a care Level II inmate by the office of medical designation and transportation". Plaintiff filed (BP-9) "Request for Remedy" which addressed the fact that FCI-Beckley can not or will not provide the level of medical treatment that plaintiff needs and NP Ellis and Dr. McLain are both fully aware that this institution FCI-Beckley is not equipped or staffed to treat plaintiff's serious medical needs, even Judge Reeves stated in open court that plaintiff's sentence should be served at a "Bonafide Medical Center". Both NP Ellis and Dr. McLain show "deliberate indifference" to plaintiff's serious medical needs by failing to provide the level of medical treatment consistent to the extent of injuries, and pain and suffering experienced by plaintiff and due to these inactions to the plaintiff's known serious medical needs his condition continues to deteriorate and worsen the longer plaintiff stays at FCI-Beckley without adequate medical care. And just because FCI-Beckley has been labeled a care level II Facility does not mean anything if the level of care provided fails to reach that designated status. Response to (BP-9) was generated by the acting Warden D.J. Harmon on 7-19-2010 stating that further testing would ensue to diagnose and evaluate existing problems and plan of care changes would be considered at that time, request denied.

Plaintiff filed (BP-10) on 7-31-2010 alleging "deliberate indifference" by numerous Health Service Employees by not adequately treating plaintiff or transferring to Medical Center for treatment. As a result plaintiff continues to suffer and endure chronic pain and deterioration which adds further to injuries. All BOP Staff (Warden, Dr. McLain, and NP Ellis) agrees that plaintiff suffers "serious medical injuries". Response from Regional Director to (BP-10) on 10-29-2010 "appeal denied". Plaintiff filed (BP-11) On 11-7-2010 addressing same issues and requests to be transferred to medical center. Appeal denied. the remedy was exhausted. The veterans administration determined plaintiff to 60% disability (see 38CFR§4.40,4.45) "due to pain". Yet all plaintiff can receive at this care level 2 facility is motrin ? Also as found in remedy ID#595927 (see exhibit J) plaintiff filed (bp-8)"informal resolution" alleging that unit manager Mike Snow has deliberately interfered with treatment when he took it upon himself to have a medical pass for "chair-in-cell" to be revoked that had previous been as treatment by NP Ellis for an evident medical condition to facilitate access to locker due to extreme pain and immobility associated with serious medical condition. Mike Snow willingly and wantonly interfered with treatment to intentionally inflict pain by having "Chair-in-cell" pass revoked based solely upon is word as unit manager, resulting in denial and intentional interference of treatment rising to more than "Deliberate Indifference". Response to (bp-8) on 6-22-2010 states,"the chair is not medical equipment and can not be issued as such". Then as an after thought wrote,"Mr.Snow did not take chair pass away or change medical pass, medical decided it was not necessary"-(but only after Mr. Snow requested that Medical revoke the pass).

Plaintiff then filed (BP-9) on 6-21-2010 challenging Unit Manager's Mike Snow's authority to interfere, usurp and exert undue influence upon Health Services Dept. Staff in the performance of their assigned duties. Mr. Snow did not like the fact that Mr. Cline had a chair in his cell and when Mr. Cline tried to explain the chair and Medical pass for it Mr. Snow responded, "I don't care" and "That he would not have a chair in his cell", then snatched the medical pass out of Mr. Cline's hand and stormed off straight to Health Services. A short time later "Chair Pass" was revoked. Mr. Snow was not and is not a Medical Health Care Staff and as such can not (with any authority) determine what treatment is or is not beneficial to a client, this was nothing short of an intentional interference with treatment and Medical Staff in the performance of their duties. Response to (BP-9) on 7-15-2010 by then acting Warden D.J. Harmon stating, "Request for Remedy denied", he listed the reasons for denial, 1) Reported to staff members of unit team that there was misuse of chair 2) chair was not deemed as medical equipment therefore chair-pass inappropriate (but in a Medical Center there would be no need for a chair-pass as chairs would be readily available). Cline filed (BP-10) on 7-26-2010 appealing Warden's response (as it was readily seen that the Warden was covering for his staff), "That there are "NO" allegations to the exact way the chair was being abused or misused." Mike Snow didn't like the chair in Mr. Cline's cell, then Medical Staff all of a sudden determined that a chair was not authorized medical equipment and therefore could not be issued as such all this just to suit Mike Snow's reasoning (since he's obviously a Medical Expert). Mike Snow is in clear violation of policy, Ethical Standards of Employee Conduct, and violation of State and Federal constitutional rights. Also in

(BP-10), "Ellis is in violation of Policy 6031.01 patient care, to allow himself to be bullied or persuaded to alter medical treatment by non-medical staff and as such, Ellis, has compromised Cline's well-being and safety within his own cell. Response to (BP-10) by Region on 11-1-2010 states, "that the medical pass for the chair was revoked due to reports of misuse by lounging and reading in the chair. (of course it is not stated on the record where these "Reports" came from but it's pretty obvious that Mike Snow was the one making the "Report".). Furthermore chair pass was issued as Medical treatment but has erroneously been treated as a privilege. "Appeal Denied". Mr. Cline filed (BP-11) on 11-8-2010 addressing issues such as Mr. Snow intentionally and willfully and wantonly elected to personally interfere with Cline's medical treatment by exerting "undue influence" over N.P. Ellis and usurping Ellis of his medical authority to issue medical permits for treatment as he sees fit and necessary for the welfare of inmates. The Warden's response to BP-9 says that Mr. Cline was misusing this "privilege", again this is "medical treatment" not "privilege" and neither does he provide an explanation of exactly how it was being misused or abused. And moreover the medical staff are obviously more qualified to evaluate, assess, and gauge an inmates' medical problems than an Associate Warden or Unit Manager. Response to (BP-11) on 4-26-2011 "Appeal Denied", "Remedy was Exhausted".

As previously shown the following defendants have and continue to violate Mr. Cline's 8th Amendment right to be free from **cruel and unusual punishment** by failure to provide adequate and correct treatment to his serious medical needs :

N.P. Ellis = "deliberate indifference" by refusal to treat Mr.

Cline's serious medical issues properly and effectively and by denying an effective pain reliever (even when it was known that Mr. Cline suffers from chronic agonizing pain), but willfully and wantonly inflicted pain and suffering upon Mr. Cline continuously claiming that policy prevents him from issuing proper treatment.

Dr. Dominic McLain, D.O. = "deliberate indifference" by refusal to treat Mr. Cline's serious medical issues properly and effectively and also by denying an effective pain reliever (even when it was known that Mr. Cline suffers from chronic agonizing pain and that N.P. Ellis [his subordinate] has also denied him proper treatment), but willfully and wantonly inflicted pain and suffering upon Mr. Cline continuously claiming that policy prevents him from issuing proper treatment.

Thompson, "Medical Director" = "deliberate indifference" by refusing to order the proper and effective treatment for Mr. Cline's serious medical problems when he knew that Mr. Cline suffers from chronic agonizing pain and should be at a medical center and that his subordinates Ellis and McLain have also refused to properly treat, and he refused to take the necessary action to remedy the denial of effective and adequate treatment to Mr. Cline's serious medical problems. Thompson therefore also willfully and wantonly inflicted pain and suffering upon Mr. Cline and to cover his actions along with his subordinates, claims that policy prevents him from issuing proper treatment.

Mike Snow = "deliberate indifference" by intentionally interfering with prescribed treatment of Mr. Cline's serious medical problems by forcing Mr. Cline to suffer intense pain and suffering without use of his chair to facilitate access to locker, among other things. Mr Snow is in violation of every policy and ethical code nameable for such conduct.

Harmon, Actin Warden = "deliberate indifference" by failing to adequately address the issues of denial or interference by Mr.

Snow of legitimate medical treatment to Mr. Cline's serious medical problems. Then trying to cover for staff under his command of any wrong doing in an attempt to provide reasonings and theories to justify their actions.

Federal Bureau of Prisons = "Deliberate indifference" by failure to provide Mr. Cline (as well as other inmates) with proper and adequate medical treatment based upon the inmate's needs. the policy that Ellis, McLain, and Thompson refer to is a formulary of the BOP which provides guidelines of medications and treatments that are allowed in each care level structure designation I,II,III, The BOP use this as a blanket policy to deny effective treatment to the inmate based upon their classification care level instead of tailoring the treatment to the individuals needs as afforded by the 8th amendment. This policy relating to care levels I,II,III is unconstitutional because when an inmate such as Mr. Cline has such serious medical problems that can only be effectively treated under the care level III formulary by refusing to redesignate from care level II to care level III or by refusing to adequately treat in care level II, is denial and refusal of medical treatment. The medical staff engaged in behavior that is tantamount to torture, by refusing to treat inmates medical problems systematically merely because they may not have designation of a proper care level formulary. When an inmates problems increase then care level designation should increase however this is not the case here at FCI-beckley Mr.Cline,s serious medical concerns are not being properly treated and addressed because the policy behind the care level designation prevents it at his care level designation of II and the medical staff refuses to apply for redesignation to upgrade his care level II to care level III even when it is known beyond a shadow of a doubt by medical staff that his needed treatment is well beyond the authorized treatment of care level II. the medical staff and BOP continue to deny effective treatment to Mr. Cline's serious medial conditions and as a result of medical staff not placing Mr. Cline in a medical center to be treated effectively for his chronic pain and suffering greatly affects his health and mobility due to loss of range of motion and by Mr. Cline not being treated with effective pain meds interferes with his rehabilitation which has resulted

in severe muscle atrophy which imperils his ability to walk, whereas had he been afforded the proper medical care his pain would have been lessened and his ability to walk would have been greatly enhanced. All of this could have been avoided had the BOP heeded the judge's recommendation by designating Mr. Cline to FMC-Lexington as stated in the judgement & commitment (see Exhibit B). The BOP have a policy which allows them to circumvent the 8th amendment right by giving whatever treatment they deem adequate whether or not it addresses the medical issues of the prisoner. If a prisoner's medical needs are outside the scope of designated care level then he is given only what's authorized of that care level and denied anything else which would effectively treat medical needs. BOP policy is so broad that by giving an inmate "MOTRIN" BOP can declare that medical needs have been treated and met.

It is of Mr. Cline's opinion that this policy is deliberately indifferent to serious medical needs. It also is a clear violation of the 8th Amendment constitutional right to medical care. The policy of the care level I,II,III formulary system is unconstitutional because it puts the prisoner at the mercy of a Bureaucracy with no recourse.

IV. Statement of Claim (continued):

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments.
Cite no cases or statutes.

Requested "JURY TRIAL" for "CLASS ACTION".

MONEY DAMAGES : (1) Compensatory- \$10 MILLION DOLLARS

(2) Punitive- \$500 MILLION DOLLARS

INJUNCTION : Requested Preliminary Injunction and Temporary
Restraining order - to stop BOP employees from violating
my 8th amendment right, to be free from cruel and unusaul
punishment, by providing the level of care that is needed
to adequately address and treat my serious medical needs

V. Relief (continued)):

and/or redesignate to Federal Medical Center that is equipped
and staffed to properly address and treat my serious medical
needs. And to rule the BOP care level 1,2,3 system as prac-
ticed in denying adequate healthcare as "UNCONSTITUTIONAL".

VII. Counsel

- A. If someone other than a lawyer is assisting you in preparing this case, state the person's name:

- B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes _____ No X

If so, state the name(s) and address(es) of each lawyer contacted:

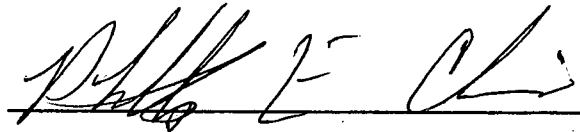
If not, state your reasons: A class action should be afforded
an appointed attorney.

- C. Have you previously had a lawyer representing you in a civil action in this court?

Yes _____ No X

If so, state the lawyer's name and address:


Signed this 8th day of November, 20 11.



Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11-8-2011
(Date)


Signature of Movant/Plaintiff

Signature of Attorney
(if any)